

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Case # 5:18-cv-1167 (GLS/TWD)

MARCHERI EDINA WILLIAMS SMITH a/k/a
MARCHERI EDINA WILLIAMS

Defendant.

COMPLAINT

Plaintiff, United States of America, by its attorneys, Grant C. Jaquith, United States Attorney for the Northern District of New York, and Mary E. Langan, Assistant United States Attorney, on behalf of the Social Security Administration, alleges the following:

1. This Court has jurisdiction over the subject matter of this action pursuant to Article III, Section 2 of the U.S. Constitution and 28 U.S.C. § 1345 and 42 U.S.C. § 404(a)(1)(A). Additionally, the Federal Debt Collection Procedures Act of 1990 ("FDCPA") authorizes the government's action now "to recover a judgment on [the] debt" that Defendant, Marcheri Edina Williams Smith a/k/a Marcheri Edina Williams (hereinafter "Defendant"), has long refused to pay. 28 U.S.C. § 3001(a).

2. Defendant resides in the Town of Clay, Onondaga County, Northern District of New York.

3. Defendant received Title II disability payments from the United States Social Security Administration (hereinafter "SSA") from September 1991 through July 2012.

4. The debtor was ineligible for disability benefits from September 1998 through December 1998, April 2009 through March 2012, and from July 2012 through August 2012. Despite that the defendant was ineligible for disability benefits during these time periods, payments were made to her through June 2012 resulting in an overpayment amount of \$32,459.50.

5. On March 26, 2012, a notice was sent to defendant informing her that she was deemed ineligible for disability benefits as of April 2009 due to her engagement in "substantial work." Even though her benefits should have ceased in April 2009, Defendant continued to receive payments through June 2012.

6. On June 27, 2012, Defendant requested a hearing. A Notice of Hearing was mailed on August 6, 2012 and a second notice was mailed on August 23, 2013 to her last known address. After the Acknowledgment of Receipt was not received, another Notice of Hearing was mailed on October 9, 2013. The claimant did not appear at the hearing. A Notice to Show Cause for Failure to Appear was mailed by certified mail return-receipt mail on October 18, 2013. Defendant signed for the letter but did not respond with 10 days after the notice was mailed. On November 22, 2013, the request for hearing made on June 27, 2012 was dismissed and the June 14, 2012 determination remained in effect.

7. On or around March 19, 2018, SSA made a final request to Defendant for repayment of the overpayment in the amount of \$32,459.50, Defendant was given until

April 20, 2018 to make payment or the debt would be referred to the Department of Justice for collection.

8. Defendant has not made payment.

Cause of Action

9. The Social Security Act provides that “[w]ith respect to payment to a person of more than the correct amount, the Commissioner of Social Security shall...require such overpaid person or her estate to refund the amount in excess of the correct amount...” 42 U.S.C. § 404(a)(1)(A).

10. The United States is entitled to recover payments made to Defendant because her entitlement to disability benefits ended when she became employed and was able to demonstrate an ability to perform substantial work.

11. The United States is entitled to recover amounts paid as an unjust enrichment to Defendant.

12. The Certificate of Indebtedness, attached as “Exhibit A”, demonstrates that Defendant is indebted to the United States in the amount of \$32,459.50 in overpayments of Social Security benefits paid to her.

WHEREFORE, the United States prays that, after due proceedings, there be a judgment in its favor and against Defendant, Marcheri E. Williams Smith, awarding the United States:

- A. The amount of \$32,459.50;
- B. Costs of these proceedings;
- C. Post-judgment interest; and

D. Any other relief which the Court may deem just and proper.

Dated: September 24, 2018

Respectfully submitted,

GRANT C. JAQUITH
UNITED STATES ATTORNEY



By: /s/ Mary E. Langan
Mary E. Langan
Assistant United States Attorney
Bar Roll No. 518971
Attorney for Plaintiff
100 S. Clinton Street
Syracuse, NY 13261
Phone: 315-448-0672
Fax: 315-448-0646

Social Security Administration

Office of Central Operations

1500 Woodlawn Drive

Baltimore, MD 21241

CERTIFICATE OF INDEBTEDNESS

Claim No. XXX-XX-2501

Marcheri Edina Williams Smith

8136 Henry Clay Blvd.

Clay, NY 13041

Total debt due United States as of April 27, 2018: \$32,459.50

I certify that the Social Security Administration's record show that the above named debtor is indebted to the United States the amount stated above.

Section 223(f) (1) (B) of the Social Security Act states that the individual may be determined not to be entitled to disability benefits based on a finding that the individual is able to engage in substantial gainful activity. Section 216(i) of the Act provides, generally that Social Security disability benefits shall not be payable to a claimant for any months in which the claimant performs substantial gainful activity.

Section 233 (a) (1) of the Act states the termination month shall be the third month following the earliest month in which an individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 month following such period of trial work in which he or she engages or is determined able to engage in substantial gainful activity.

The above named debtor was ineligible for disability benefits from September 1998 through December 1998, April 2009 through March 2012 and from July 2012 through August 2012. Payments were made through June 2012. The overpayment amount is \$32,459.50.

CERTIFICATION: Pursuant to 28 USC 1746, I certify under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Angela Hunter", is written over a horizontal line.

Angela Hunter for

Chris Goble

Associate Commissioner, OCO

Date: April 27, 2018

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Mary E. Langan, AUSA, USAO
100 S. Clinton Street, Syracuse, NY 13261
Telephone No.: 315-448-0672

DEFENDANTS

MARCHERI EDINA WILLIAMS SMITH a/k/a MARCHERI EDINA WILLIAMS

County of Residence of First Listed Defendant ONONDAGA

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FOREIGN/PROPERTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input checked="" type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1345 and 42 U.S.C. 404(a)(1)(A)

Brief description of cause:

SOCIAL SECURITY OVERPAYMENT

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
32,459.50

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

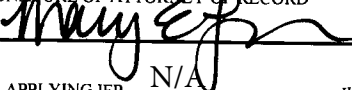
JUDGE

DOCKET NUMBER

DATE

9/24/18

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

N/A

APPLYING IFP

N/A

JUDGE

GLS

MAG. JUDGE

TWD

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